



ARIZONA STATE SENATE
Fifty-Fifth Legislature, First Regular Session

AMENDED
FACT SHEET FOR H.B. 2787

occupational regulation; good character; definition

Purpose

Modifies the criteria and process for an agency to determine whether a person's criminal record disqualifies the person for a license, permit, certificate or other state recognition (license). Prohibits an agency from negatively considering certain information and requires an agency to rescind a determination if the person is convicted of any additional disqualifying offense. Defines *moral turpitude*.

Background

A person with a criminal record may petition an agency for a determination of whether the person's criminal record disqualifies the person from obtaining a license. An agency must issue a determination within 90 days that includes findings of fact and conclusions of law and may disqualify the person only if the agency concludes that the state has an important interest in protecting public safety that is superior to the person's right and: 1) the person was convicted within the previous seven years of a felony offense, violent crime, or, if the license is for an occupation in which the applicant would owe a fiduciary duty to a client, specified offenses related to forgery or fraud; or 2) if the person was convicted at any time of a dangerous offense, serious offense, dangerous crime against children, sexual offense, sexual exploitation of children offense or an offense that a law specifically requires the agency to consider when issuing a license. The limitations on an agency's authority to disqualify a person from obtaining a license do not apply to specified entities.

To conclude that the state has an important interest in protecting public safety that is superior to the person's right, the agency must determine by clear and convincing evidence at the time of the petition that: 1) the specific offense is substantially related to the state's interest; and 2) the person is more likely to reoffend by virtue of having the license than if the person did not have the license based on the nature of the specific offense and the person's current circumstances. The agency must rescind a determination before issuing a license if the person is convicted of an additional offense such as the person was convicted within the previous seven years of a felony offense, violent crime, or, if the license is for an occupation in which the applicant would owe a fiduciary duty to a client, specified offenses related to forgery or fraud ([A.R.S. § 41-1093.04](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

1. Modifies the criteria for an agency to determine that the state has an interest that is superior to a person's right to a license by:
 - a) requiring that the specific offense specifically and directly relate to the duties and responsibilities of the occupation, except offenses involving *moral turpitude*; and

- b) specifying that the current circumstances that the agency must consider in considering includes the person's likelihood of reoffense, the passage of time since the person committed the crime and any evidence of rehabilitation or treatment.
- 2. Prohibits an agency determining if a person's criminal record disqualifies the person from obtaining a license from negatively considering:
 - a) nonconviction information, including information related to a deferred adjudication, participation in a diversion program or an arrest not followed by a conviction;
 - b) a conviction that is sealed, dismissed, expunged or pardoned;
 - c) a juvenile adjudication; or
 - d) a nonviolent misdemeanor.
- 3. Requires an agency to rescind the determination before issuing a license if the person is convicted of an additional offense that:
 - a) a law specifically requires the agency to consider when issuing a license and the conviction has not been set aside; or
 - b) is a dangerous offense, serious offense, dangerous crime against children, sexual offense or sexual exploitation of children offense.
- 4. Requires an agency to include, in the determination on a petition, the grounds and reasons for the determination if the person's criminal history disqualifies the person.
- 5. Allows a person petitioning an agency for a determination to include an authorization for the agency to obtain the person's criminal history record as an alternative to including the person's complete criminal history record.
- 6. Includes, in the actions an agency may advise that a person may take to remedy a disqualification, the earliest date the person may submit a new petition to the agency, rather than that a person may submit a new petition at any time within two years after the final determination of the initial petition.
- 7. Requires the earliest date the person may submit a new petition to be no later than two years after the final determination of the initial petition.
- 8. Requires an agency to adopt forms for a person to petition for a determination of whether the person's criminal record disqualifies the person from a license.
- 9. Excludes the following from the prohibition on negatively considering nonconviction information, a conviction that is sealed, dismissed, expunged or pardoned or a nonviolent misdemeanor:
 - a) a law enforcement agency;
 - b) the Arizona Peace Officer Standards and Training Board;
 - c) any private investigator, security guard or education certification, license or permit;
 - d) any criteria for a license, permit or certificate eligibility established by an interstate compact; or
 - e) any license, permit or certificate that requires a fingerprint clearance card.

10. Defines *moral turpitude*, for the purposes of Arizona statutes and laws, as an offense, whether a misdemeanor or felony, that is related to extortion, burglary, larceny, bribery, embezzlement, robbery, racketeering, money laundering, forgery, fraud, murder, voluntary manslaughter or a sexual offense that requires the individual to register as a sex offender.
11. Directs the Legislative Council Staff to prepare proposed conforming legislation for consideration in the Fifty-Fifth Legislature, Second Regular Session.
12. Specifies that Occupational Regulation statutes do not:
 - a) require a private employer to grant or deny employment; or
 - b) impair a private employer's right to establish and enforce eligibility criteria, ethics codes or disciplinary policies.
13. Makes technical and conforming changes.
14. Becomes effective on the general effective date.

Amendments Adopted by Committee

1. Replaces the exclusion of outlined agencies from the determination requirement with an exclusion of outlined agencies from the prohibition on negatively considering:
 - a) nonconviction information;
 - b) a conviction that is sealed, dismissed, expunged or pardoned; or
 - c) a nonviolent misdemeanor.
2. Specifies that Occupational Regulation statutes do not require a private employer to grant or deny employment or impair a private employer's right to establish and enforce eligibility criteria, ethics codes or disciplinary policies.
3. Makes technical changes.

House Action

COM	2/16/21	DPA	6-3-0-1
3 rd Read	3/4/21		59-0-1

Senate Action

COM	3/24/21	DPA	8-0-1
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Prepared by Senate Research
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